

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

**Plaintiff,**

V.

JOSEPH DANIEL TURREY,

Defendant.

| NO. CR21-5385BHS

## **GOVERNMENT'S PROPOSED JURY INSTRUCTIONS (CITED)**

## GOVERNMENT'S PROPOSED JURY INSTRUCTIONS (CITED)

Respectfully submitted,

NICHOLAS W. BROWN  
United States Attorney

/s/Kristine Foerster  
KRISTINE FOERSTER  
WILLIAM DREHER  
Assistant United States Attorneys  
United States Attorney's Office  
1201 Pacific Avenue, Suite 700  
Tacoma, Washington 98402  
Telephone: 253-428-3800  
Facsimile: 253-428-3826

<u>Preliminary Instruction No.</u>	<u>Description</u>	<u>9<sup>th</sup> Circuit Model No.</u>	<u>Page No.</u>
1	Unconscious Bias Instruction	WDWA Unconscious Bias Instruction	4
2	Duty of Jury & Unconscious Bias Instruction	1.1	5
3	The Charge - Presumption of Innocence	1.2	6-10
4	Reasonable Doubt - Defined	6.5	11
5	What is Evidence	1.3	12
6	What is Not Evidence	1.4	13
7	Direct and Circumstantial Evidence	1.5	14
8	Ruling on Objections	1.6	15
9	Credibility of Witnesses & Unconscious Bias Instruction	1.7	16
10	Conduct of the Jury	1.8	17-19
11	No Transcript Available to Jury	1.9	20
12	Taking Notes	1.10	21
13	Outline of Trial	1.11	22
14	Bench Conferences and Recesses	1.16	23
15	Cautionary Instructions – First Recess	2.1	24-25
<u>Instructions During Course of Trial No.</u>	<u>Description</u>	<u>9<sup>th</sup> Circuit Model No.</u>	<u>Page No.</u>
1	Stipulations of Fact	2.3	26
2	Transcript of Recording in English	2.6	27
<u>Final Instruction No.</u>	<u>Description</u>	<u>9<sup>th</sup> Circuit Model No.</u>	<u>Page No.</u>
1	Duties of Jury to Find Facts and Follow Law	6.1	28
2	Charge Against Defendant Not Evidence – Presumption of Innocence- Burden of Proof	6.2	29
3	Defendant's Decision Not to Testify	6.3	30
4	Defendant's Decision to Testify	6.4	30
5	Reasonable Doubt - Defined	6.5	31
6	What is Evidence	6.6	32
7	What is Not Evidence	6.7	33

1	8	Direct and Circumstantial Evidence	6.8	34
2	9	Credibility of Witnesses	6.9	35-36
3	10	Activities Not Charged	6.10	37
4	11	Separate Consideration of Multiple Counts – Single Defendant	6.11	38
5	12	On or About – Defined	6.18	39
6	13	Statements by Defendant	3.1	40
7	14	Similar Acts in Sexual Assault and Child Molestation Cases	2.11	41
8	15	Opinion Evidence, Expert Witness	3.14	42
9	16	Aggravated Sexual Abuse of a Minor (MV2) (Count 1)	20.5 18 U.S.C. § 2241(c)	43
10	17	Knowingly	4.8	44
11	18	Aggravated Sexual Abuse of a Minor (MV2) (Count 2)	20.5 18 U.S.C. § 2241(c)	45
12	19	Aggravated Sexual Abuse of a Minor (MV2) (Count 3)	20.5 18 U.S.C. § 2241(c)	46
13	20	Aggravated Sexual Abuse of a Minor (MV2) (Count 4)	20.5 18 U.S.C. § 2241(c)	47
14	21	Aggravated Sexual Abuse of a Minor (MV2) (Count 5)	20.5 18 U.S.C. § 2241(c)	48
15	22	Aggravated Sexual Abuse of a Minor (MV2) (Count 6)	20.5 18 U.S.C. § 2241(c)	49
16	23	Abusive Sexual Contact (MV2) (Count 7)	20.16 18 U.S.C. § 2244(a)	50
17	24	Sexual Abuse of a Minor (MV2) (Count 8)	20.11 18 U.S.C. § 2243(a)	51
18	25	Sexual Abuse of a Minor (MV2) (Count 9)	20.11 18 U.S.C. § 2243(a)	52
19	26	Determination of Indian Status for Offenses Committed Within Indian Country	24.14, 2.3	53
20	27	Duty to Deliberate	6.19	54-55
21	28	Consideration of Evidence	6.20	56-57
22	29	Use of Notes	6.21	58
23	30	Jury Consideration of Punishment	6.22	59
24	31	Verdict Form	6.23	60
25	32	Communication With Court	6.24	61

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 1**

2                   INSTRUCTION NO. \_

3                   *To be given to the entire panel before jury selection:*

4                   It is important that you discharge your duties without discrimination, meaning that  
5 bias regarding the race, color, religious beliefs, national origin, sexual orientation, gender  
6 identity, or gender of the defendant, any witnesses, and the lawyers should play no part in  
7 the exercise of your judgment throughout the trial.

8                   Accordingly, during this voir dire and jury selection process, I and the lawyers  
9 may ask questions related to the issues of bias and unconscious bias.

10                  Western District of Washington, Preliminary Unconscious Bias Instruction.

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 2**

2                   INSTRUCTION NO. \_\_

3                   Jurors: You now are the jury in this case, and I want to take a few minutes to tell  
4 you something about your duties as jurors and to give you some preliminary instructions.  
5 At the end of the trial, I will give you more detailed [written] instructions that will control  
6 your deliberations.

7                   When you deliberate, it will be your duty to weigh and to evaluate all the evidence  
8 received in the case and, in that process, to decide the facts. To the facts as you find  
9 them, you will apply the law as I give it to you, whether you agree with the law or not.  
10 You must decide the case solely on the evidence and the law before you.

11                  Perform these duties fairly and impartially. You should not be influenced by any  
12 person's race, color, religious beliefs, national ancestry, sexual orientation, gender  
13 identity, gender, or economic circumstances. Also, do not allow yourself to be  
14 influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or  
15 biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or  
16 preferences that people may consciously reject but may be expressed without conscious  
17 awareness, control, or intention. Like conscious bias, unconscious bias can affect how  
18 we evaluate information and make decisions.

19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 1.1 (2022 Edition)

28 Approved Dec. 2021

## **PROPOSED PRELIMINARY INSTRUCTION NO. 3**

### INSTRUCTION NO.

This is a criminal case brought by the United States government. The government charges defendant Joseph Turrey with nine offenses. The charges are contained in a Second Superseding Indictment. The Second Superseding Indictment simply describes the charges the government brings against the defendant. The Second Superseding Indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never has to prove innocence or present any evidence.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes that the government must prove to make its case.

The defendant is charged in Counts One, Two, Three, Four, Five, and Six with Aggravated Sexual Abuse of a Minor, in violation of Section 2241(c) of Title 18 of the United States Code.

To find the defendant guilty of Count One, the government must prove that:

First, the defendant is an Indian;

Second, the defendant knowingly engaged in a sexual act with S.T., that is the intentional touching, not through the clothing, of the genitalia of S.T. with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Third, S.T. had not at the time of that act reached the age of twelve years; Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles, Washington, which I instruct you is in Indian Country.

1  
2 To find the defendant guilty of Count Two, the government must prove that:  
3

4 First, the defendant is an Indian;

5 Second, the defendant knowingly engaged in a sexual act with E.T., that is  
6 the penetration, however slight, of the genital opening of E.T. by a finger,  
7 with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the  
8 sexual desire of any person;

9 Third, E.T. had not at the time of that act reached the age of twelve years;

10 Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles,

11 Washington, which I instruct you is in Indian Country.

13 To find the defendant guilty of Count Three, the government must prove that:  
14

15 First, the defendant is an Indian;

16 Second, the defendant knowingly engaged in a sexual act with E.T., that is  
17 the intentional touching, not through the clothing, of the genitalia of E.T.  
18 with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the  
19 sexual desire of any person;

20 Third, E.T. had not at the time of that act reached the age of twelve years;

21 Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles,

22 Washington, which I instruct you is in Indian Country.

24 To find the defendant guilty of Count Four, the government must prove that:  
25

26 First, the defendant is an Indian;

27 Second, the defendant knowingly engaged in a sexual act with E.T., that is  
28 contact between the penis and vulva, specifically penetration, however  
slight;

1           Third, E.T. had not at the time of that act reached the age of twelve years;  
2           Fourth, the sexual act occurred at Great Wolf Lodge located at 20500 Old  
3           Hwy 99 SW, Centralia, Washington, which I instruct you is in Indian  
4           Country.  
5  
6

7           To find the defendant guilty of Count Five, the government must prove that:

8           First, the defendant is an Indian;  
9           Second, the defendant knowingly engaged in a sexual act with E.T., that is  
10          contact between the penis and the mouth;  
11          Third, E.T. had not at the time of that act reached the age of twelve years;  
12          Fourth, the sexual act occurred at Great Wolf Lodge located at 20500 Old  
13          Hwy 99 SW, Centralia, Washington, which I instruct you is in Indian  
14          Country.  
15  
16

17           To find the defendant guilty of Count Six, the government must prove that:

18           First, the defendant is an Indian;  
19           Second, the defendant knowingly engaged in a sexual act with E.T., that is  
20          contact between the penis and vulva, specifically penetration, however  
21          slight;  
22          Third, E.T. had not at the time of that act reached the age of twelve years;  
23          Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles,  
24          Washington, which I instruct you is in Indian Country.  
25  
26

27           The defendant is charged in Count Seven with Abusive Sexual Contact, in  
28          violation of Section 2244(a)(5) of Title 18 of the United States Code. To find the  
defendant guilty of that violation, the government must prove that:

1           First, the defendant is an Indian;

2           Second, the defendant knowingly engaged in sexual contact with E.T., that  
3           is the defendant intentionally caused the touching of his penis by E.T., with  
4           an intent to abuse, humiliate, harass, degrade, and arouse or gratify the  
5           sexual desire of any person;

6  
7           Third, E.T. had not at the time of that contact reached the age of twelve  
8           years;

9  
10          Fourth, the sexual contact occurred at 71 Snow Caps Lane, Port Angeles,  
11           Washington, which I instruct you is in Indian Country.

12          The defendant is charged in Counts Eight and Nine with Sexual Abuse of a Minor,  
13           in violation of Section 2243(a) of Title 18 of the United States Code.

14  
15          To find the defendant guilty of Count Eight, the government must prove that:

16           First, the defendant is an Indian;

17           Second, the defendant knowingly engaged in a sexual act with E.T., that is  
18           contact between the penis and vulva, specifically penetration, however  
19           slight;

20  
21           Third, E.T. had at the time of that act reached the age of twelve years but  
22           had not yet reached the age of sixteen years;

23           Fourth, E.T. was at least four years younger than the defendant;

24           Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles,  
25           Washington, which I instruct you is in Indian Country.

26  
27          To find the defendant guilty of Count Nine, the government must prove that:

28           First, the defendant is an Indian;

1       Second, the defendant knowingly engaged in a sexual act with E.T., that is  
2 contact between the penis and the mouth;  
3  
4       Third, E.T. had at the time of that act reached the age of twelve years but  
5 had not yet reached the age of sixteen years;  
6  
7       Fourth, E.T. was at least four years younger than the defendant;  
8  
9       Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles,  
10 Washington, which I instruct you is in Indian Country.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 1.2 (2022 Edition)  
28

*Approved Dec. 2021*

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 4**

2                   INSTRUCTION NO. \_\_\_\_

3                   Proof beyond a reasonable doubt is proof that leaves you firmly convinced the  
4 defendant is guilty. It is not required that the government prove guilt beyond all possible  
5 doubt.

6                   A reasonable doubt is a doubt based upon reason and common sense and is not  
7 based purely on speculation. It may arise from a careful and impartial consideration of  
8 all the evidence, or from lack of evidence.

9                   If after a careful and impartial consideration of all the evidence, you are not  
10 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find  
11 the defendant not guilty. On the other hand, if after a careful and impartial consideration  
12 of all the evidence, you are convinced beyond a reasonable doubt that the defendant is  
13 guilty, it is your duty to find the defendant guilty.  
14

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 6.5 (2022 Edition)  
28

*Approved Dec. 2021*

1  
2                   **PROPOSED PRELIMINARY INSTRUCTION NO. 5**  
3

4                   INSTRUCTION NO. \_\_

5                   The evidence you are to consider in deciding what the facts are consists of:

- 6                   1.       The sworn testimony of any witness;  
7                   2.       The exhibits which are received in evidence; and  
8                   3.       Any facts to which the parties agree.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 1.3 (2022 Edition)  
28

*Approved Dec. 2021*

United States' Proposed Jury Instructions - 12  
Turrey/CR21-5385 BHS

UNITED STATES ATTORNEY  
1201 PACIFIC AVENUE, SUITE 700  
TACOMA, WASHINGTON 98402  
(253) 428-3800

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 6**

2                   INSTRUCTION NO. \_\_

3                   The following things are not evidence, and you must not consider them as  
4                   evidence in deciding the facts of this case:

- 5                   1. Statements and arguments of the attorneys;
- 6                   2. Questions and objections of the attorneys;
- 7                   3. Testimony that I instruct you to disregard; and
- 8                   4. Anything you may see or hear when the court is not in session even if what
- 9                   you see or hear is done or said by one of the parties or by one of the
- 10                  witnesses.

11                  Ninth Circuit Model Jury Instruction - 1.4 (2022 Edition)

12                  Approved Dec. 2021

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 7**

2                   INSTRUCTION NO. \_\_

3                   Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact,  
4 such as testimony by a witness about what that witness personally saw or heard or did.  
5 Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from  
6 which one can find another fact.

7                   You are to consider both direct and circumstantial evidence. Either can be used to  
8 prove any fact. The law makes no distinction between the weight to be given to either  
9 direct or circumstantial evidence. It is for you to decide how much weight to give to any  
10 evidence.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 1.5 (2022 Edition)

28 *Approved Dec. 2021*

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 8**

2                   INSTRUCTION NO. \_\_

3                   There are rules of evidence that control what can be received in evidence. When a  
4 lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side  
5 thinks that it is not permitted by the rules of evidence, that lawyer may object. If I  
6 overrule the objection, the question may be answered or the exhibit received. If I sustain  
7 the objection, the question cannot be answered, or the exhibit cannot be received.  
8 Whenever I sustain an objection to a question, you must ignore the question and must not  
9 guess what the answer would have been.

10                  Sometimes I may order that evidence be stricken from the record and that you  
11 disregard or ignore the evidence. That means that when you are deciding the case, you  
12 must not consider the evidence that I told you to disregard.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 Ninth Circuit Model Jury Instruction - 1.6 (2022 Edition)

Approved Dec. 2021

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 9**

2                   INSTRUCTION NO. \_\_

3                   In deciding the facts in this case, you may have to decide which testimony to  
4 believe and which testimony not to believe. You may believe everything a witness says,  
5 or part of it, or none of it.

6                   In considering the testimony of any witness, you may take into account:

- 7                   (1) the witness's opportunity and ability to see or hear or know the things testified  
8 to;
- 9                   (2) the witness's memory;
- 10                  (3) the witness's manner while testifying;
- 11                  (4) the witness's interest in the outcome of the case, if any;
- 12                  (5) the witness's bias or prejudice, if any;
- 13                  (6) whether other evidence contradicted the witness's testimony;
- 14                  (7) the reasonableness of the witness's testimony in light of all the evidence; and
- 15                  (8) any other factors that bear on believability.

16                  You must avoid bias, conscious or unconscious, based on a witness's race, color,  
17 religious beliefs, national ancestry, sexual orientation, gender identity, gender, or  
18 economic circumstances in your determination of credibility.

19                  The weight of the evidence as to a fact does not necessarily depend on the number  
20 of witnesses who testify about it. What is important is how believable the witnesses are,  
21 and how much weight you think their testimony deserves.

22  
23  
24  
25  
26  
27 Ninth Circuit Jury Instruction – 1.7 (2022 Edition)

28 Approved Dec. 2021

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 10**

2                   INSTRUCTION NO. \_\_

3                   I will now say a few words about your conduct as jurors.

4                   First, keep an open mind throughout the trial, and do not decide what the verdict  
5                   should be until you and your fellow jurors have completed your deliberations at the end  
6                   of the case.

7                   Second, because you must decide this case based only on the evidence received in  
8                   the case and on my instructions as to the law that applies, you must not be exposed to any  
9                   other information about the case or to the issues it involves during the course of your jury  
10                  duty. Thus, until the end of the case or unless I tell you otherwise:

11                  Do not communicate with anyone in any way and do not let anyone else  
12                  communicate with you in any way about the merits of the case or anything to do with it.  
13                  This restriction includes discussing the case in person, in writing, by phone, tablet, or  
14                  computer, or any other means, via email, via text messaging, or any Internet chat room,  
15                  blog, website or application, including but not limited to Facebook, YouTube, Twitter,  
16                  Instagram, LinkedIn, Snapchat, TikTok, or any other forms of social media. This  
17                  restriction also applies to communicating with your fellow jurors until I give you the case  
18                  for deliberation, and it applies to communicating with everyone else including your  
19                  family members, your employer, the media or press, and the people involved in the trial,  
20                  although you may notify your family and your employer that you have been seated as a  
21                  juror in the case, and how long you expect the trial to last. But, if you are asked or  
22                  approached in any way about your jury service or anything about this case, you must  
23                  respond that you have been ordered not to discuss the matter. In addition, you must  
24                  report the contact to the court.

25                  Because you will receive all the evidence and legal instruction you properly may  
26                  consider to return a verdict: do not read, watch, or listen to any news or media accounts

1 or commentary about the case or anything to do with it[, although I have no information  
2 that there will be news reports about this case]; do not do any research, such as consulting  
3 dictionaries, searching the Internet or using other reference materials; and do not make  
4 any investigation or in any other way try to learn about the case on your own. Do not  
5 visit or view any place discussed in this case, and do not use the Internet or any other  
6 resource to search for or view any place discussed during the trial. Also, do not do any  
7 research about this case, the law, or the people involved—including the parties, the  
8 witnesses or the lawyers—until you have been excused as jurors. If you happen to read or  
9 hear anything touching on this case in the media, turn away and report it to me as soon as  
10 possible.

12 These rules protect each party's right to have this case decided only on evidence  
13 that has been presented here in court. Witnesses here in court take an oath to tell the truth,  
14 and the accuracy of their testimony is tested through the trial process. If you do any  
15 research or investigation outside the courtroom, or gain any information through  
16 improper communications, then your verdict may be influenced by inaccurate,  
17 incomplete or misleading information that has not been tested by the trial process. Each  
18 of the parties is entitled to a fair trial by an impartial jury, and if you decide the case  
19 based on information not presented in court, you will have denied the parties a fair trial.  
20 Remember, you have taken an oath to follow the rules, and it is very important that you  
21 follow these rules.

23 A juror who violates these restrictions jeopardizes the fairness of these  
24 proceedings[, and a mistrial could result that would require the entire trial process to start  
25 over]. If any juror is exposed to any outside information, please notify the court  
26 immediately.

1           Ninth Circuit Model Jury Instruction - 1.8 (2022 Edition)  
2  
3       *Approved Dec. 2021*  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 11**

2                   INSTRUCTION NO. \_\_

3                   At the end of the trial you will have to make your decision based on what you  
4 recall of the evidence. You will not have a written transcript of the trial. I urge you to  
5 pay close attention to the testimony as it is given.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

Ninth Circuit Model Jury Instruction - 1.9 (2022 Edition)

28

Approved Dec. 2021

United States' Proposed Jury Instructions - 20  
Turrey/CR21-5385 BHS

UNITED STATES ATTORNEY  
1201 PACIFIC AVENUE, SUITE 700  
TACOMA, WASHINGTON 98402  
(253) 428-3800

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 12**

2                   INSTRUCTION NO. \_\_

3                   If you wish, you may take notes to help you remember the evidence. If you do  
4 take notes, please keep them to yourself until you and your fellow jurors go to the jury  
5 room to decide the case. Do not let note-taking distract you from being attentive. When  
6 you leave court for recesses, your notes should be left on your seats in the courtroom  
7 where they will not be disturbed. No one will read your notes.

8                   Whether or not you take notes, you should rely on your own memory of the  
9 evidence. Notes are only to assist your memory. You should not be overly influenced by  
10 your notes or those of your fellow jurors.

11                   Ninth Circuit Model Jury Instruction - 1.10 (2022 Edition)

12                   *Approved Dec. 2021*

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 13**

2                   INSTRUCTION NO. \_\_

3                   The next phase of the trial will now begin. First, each side may make an opening  
4 statement. An opening statement is not evidence. It is simply an outline to help you  
5 understand what that party expects the evidence will show. A party is not required to  
6 make an opening statement.

7                   The government will then present evidence and counsel for the defendant may  
8 cross-examine. Then, if the defendant chooses to offer evidence, counsel for the  
9 government may cross-examine.

10                  After the evidence has been presented, I will instruct you on the law that applies to  
11 the case and the attorneys will make closing arguments.

12                  After that, you will go to the jury room to deliberate on your verdict.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
Ninth Circuit Model Jury Instruction - 1.11 (2022 Edition)

28  
*Approved Dec. 2021)*

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 14**

2                   INSTRUCTION NO. \_\_

3                   During the trial, I may need to take up legal matters with the attorneys privately,  
4 either by having a conference at the bench when the jury is present in the courtroom, or  
5 by calling a recess. Please understand that while you are waiting, we are working. The  
6 purpose of these conferences is not to keep relevant information from you, but to decide  
7 how certain evidence is to be treated under the rules of evidence and to avoid confusion  
8 and error.

9                   Of course, we will do what we can to keep the number and length of these  
10 conferences to a minimum. I may not always grant an attorney's request for a  
11 conference. Do not consider my granting or denying a request for a conference as any  
12 indication of my opinion of the case or what your verdict should be.  
13

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction – 1.16 (2022 Edition)

28 *Approved Dec. 2021*

1                   **PROPOSED PRELIMINARY INSTRUCTION NO. 15**

2                   INSTRUCTION NO. \_\_

3 At the End of Each Day of the Case:

4                   As I indicated before this trial started, you as jurors will decide this case based  
5 solely on the evidence presented in this courtroom. This means that, after you leave here  
6 for the night, you must not conduct any independent research about this case, the matters  
7 in the case, the legal issues in the case, or the individuals or other entities involved in the  
8 case. This is important for the same reasons that jurors have long been instructed to limit  
9 their exposure to traditional forms of media information such as television and  
10 newspapers. You also must not communicate with anyone, in any way, about this case.  
11 And you must ignore any information about the case that you might see while browsing  
12 the internet or your social media feeds.

13 At the Beginning of Each Day of the Case:

14                   As I reminded you yesterday and continue to emphasize to you today, it is  
15 important that you decide this case based solely on the evidence and the law presented  
16 here. So you must not learn any additional information about the case from sources  
17 outside the courtroom. To ensure fairness to all parties in this trial, I will now ask each of  
18 you whether you have learned about or shared any information about this case outside of  
19 this courtroom, even if it was accidental.

20  
21 [ALTERNATIVE 1 (in open court): if you think that you might have done so, please let  
22 me know now by raising your hand. [Wait for a show of hands]. I see no raised hands;  
23 however, if you would prefer to talk to the court privately in response to this question,  
24 please notify a member of the court's staff at the next break. Thank you for your careful  
25 adherence to my instructions.]

1 [ALTERNATIVE 2 (during voir dire with each juror, individually): Have you learned  
2 about or shared any information about this case outside of this courtroom? . . . Thank you  
3 for your careful adherence to my instructions.]  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Ninth Circuit Model Jury Instruction - 2.1 (2022 Edition)

*Approved Dec. 2021*

United States' Proposed Jury Instructions - 25  
Turrey/CR21-5385 BHS

UNITED STATES ATTORNEY  
1201 PACIFIC AVENUE, SUITE 700  
TACOMA, WASHINGTON 98402  
(253) 428-3800

1                   **PROPOSED INSTRUCTION DURING COURSE OF TRIAL NO. 1**  
2

3                   INSTRUCTION NO. \_\_\_\_  
4

5                   The parties have agreed to certain facts that have been stated to you. Those facts  
6 are now conclusively established.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Ninth Circuit Model Jury Instruction 2.3 - (2022 Edition)

*Approved Dec. 2021*

United States' Proposed Jury Instructions - 26  
Turrey/CR21-5385 BHS

UNITED STATES ATTORNEY  
1201 PACIFIC AVENUE, SUITE 700  
TACOMA, WASHINGTON 98402  
(253) 428-3800

1                   **PROPOSED INSTRUCTION DURING COURSE OF TRIAL NO. 2**

2                   INSTRUCTION NO. \_\_\_\_

3                   You are about to hear and watch a recording that has been received in evidence.  
4 Please listen to it very carefully. Each of you has been given a transcript of the recording  
5 to help you identify speakers and as a guide to help you listen to the recording. However,  
6 bear in mind that the recording is the evidence, not the transcript. If you hear something  
7 different from what appears in the transcript, what you hear is controlling. After the  
8 recording has been played, the transcript will be taken from you.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 Ninth Circuit Model Jury Instruction - 2.6 (2022 Edition)

27 *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 1**  
2  
3

4                   INSTRUCTION NO. \_\_\_\_  
5  
6

7                   Members of the jury, now that you have heard all the evidence, it is my duty to  
8 instruct you on the law that applies to this case. A copy of these instructions will be  
9 available in the jury room for you to consult.

10                  It is your duty to weigh and to evaluate all the evidence received in the case and,  
11 in that process, to decide the facts. It is also your duty to apply the law as I give it to you  
12 to the facts as you find them, whether you agree with the law or not. You must decide  
13 the case solely on the evidence and the law. Do not allow personal likes or dislikes,  
14 sympathy, prejudice, fear, or public opinion to influence you. You should also not be  
15 influenced by any person's race, color, religious beliefs, national ancestry, sexual  
16 orientation, gender identity, gender, or economic circumstances. Also, do not allow  
17 yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public  
18 opinion, or biases, including unconscious biases. Unconscious biases are stereotypes,  
19 attitudes, or preferences that people may consciously reject but may be expressed without  
conscious awareness, control, or intention. You will recall that you took an oath  
promising to do so at the beginning of the case.

20                  You must follow all these instructions and not single out some and ignore others;  
21 they are all important. Please do not read into these instructions or into anything I may  
22 have said or done any suggestion as to what verdict you should return—that is a matter  
23 entirely up to you.

24  
25                  Ninth Circuit Model Jury Instruction - 6.1 (2022 Edition)

26                  *Approved Dec. 2021*  
27  
28

1                   **PROPOSED FINAL INSTRUCTION NO. 2**  
2  
3                   INSTRUCTION NO. \_\_\_\_

4                   The Second Superseding Indictment is not evidence. The defendant has pleaded  
5                   not guilty to the charges. The defendant is presumed to be innocent unless and until the  
6                   government proves the defendant guilty beyond a reasonable doubt. In addition, the  
7                   defendant does not have to testify or present any evidence. The defendant does not have  
8                   to prove innocence; the government has the burden of proving every element of the  
9                   charges beyond a reasonable doubt.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 6.2 (2022 Edition)  
28

*Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 3**

2                   INSTRUCTION NO. \_\_

3                   A defendant in a criminal case has a constitutional right not to testify. In arriving  
4 at your verdict, the law prohibits you from considering in any manner that the defendant  
5 did not testify.

6  
7  
8  
9  
10  
11 Ninth Circuit Model Jury Instruction - 6.3 (2022 Edition)

12 *Approved Dec. 2021*

13  
14  
15                   **OR**

16                   **PROPOSED FINAL INSTRUCTION NO. 4**

17                   INSTRUCTION NO. \_\_

18                   The defendant has testified. You should treat this testimony just as you would the  
19 testimony of any other witness.

20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 6.4 (2022 Edition)

28 *Approved Dec. 2021*

1  
2  
**PROPOSED FINAL INSTRUCTION NO. 5**  
3

4                   INSTRUCTION NO. \_\_\_\_  
5

6       Proof beyond a reasonable doubt is proof that leaves you firmly convinced the  
7 defendant is guilty. It is not required that the government prove guilt beyond all possible  
doubt.  
8

9       A reasonable doubt is a doubt based upon reason and common sense and is not  
10 based purely on speculation. It may arise from a careful and impartial consideration of  
all the evidence, or from lack of evidence.  
11

12      If after a careful and impartial consideration of all the evidence, you are not  
13 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find  
14 the defendant not guilty. On the other hand, if after a careful and impartial consideration  
15 of all the evidence, you are convinced beyond a reasonable doubt that the defendant is  
16 guilty, it is your duty to find the defendant guilty.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Ninth Circuit Model Jury Instruction - 6.5 (2022 Edition)

Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 6**  
2  
3                   INSTRUCTION NO. \_\_\_\_  
4

5                   The evidence you are to consider in deciding what the facts are consists of:

- 6                   (1)     the sworn testimony of any witness;  
7                   (2)     the exhibits received in evidence; and  
8                   (3)     any facts to which the parties have agreed.

27                   Ninth Circuit Model Jury Instruction - 6.6 (2022 Edition)  
28

*Approved Dec. 2021*

United States' Proposed Jury Instructions - 32  
Turrey/CR21-5385 BHS

UNITED STATES ATTORNEY  
1201 PACIFIC AVENUE, SUITE 700  
TACOMA, WASHINGTON 98402  
(253) 428-3800

1                   **PROPOSED FINAL INSTRUCTION NO. 7**

2                   INSTRUCTION NO. \_\_\_\_

3                   In reaching your verdict you may consider only the testimony and exhibits  
4 received in evidence. The following things are not evidence and you may not consider  
5 them in deciding what the facts are:

6                   1.       Questions, statements, objections, and arguments by the lawyers are not  
7 evidence. The lawyers are not witnesses. Although you must consider a lawyer's  
8 questions to understand the answers of a witness, the lawyer's questions are not evidence.  
9 Similarly, what the lawyers have said in their opening statements, will say in their closing  
10 arguments and at other times is intended to help you interpret the evidence, but it is not  
11 evidence. If the facts as you remember them differ from the way the lawyers state them,  
12 your memory of them controls.

13                  2.       Any testimony that I have excluded, stricken, or instructed you to disregard  
14 is not evidence. In addition, some evidence was received only for a limited purpose;  
15 when I have instructed you to consider certain evidence in a limited way, you must do so.

16                  3.       Anything you may have seen or heard when the court was not in session is  
17 not evidence. You are to decide the case solely on the evidence received at the trial.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27                  Ninth Circuit Model Jury Instruction - 6.7 (2022 Edition)

28                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 8**  
2  
3                   INSTRUCTION NO. \_\_\_\_

4                   Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact,  
5 such as testimony by a witness about what that witness personally saw or heard or did.  
6 Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from  
7 which you can find another fact.

8                   You are to consider both direct and circumstantial evidence. Either can be used to  
9 prove any fact. The law makes no distinction between the weight to be given to either  
10 direct or circumstantial evidence. It is for you to decide how much weight to give to any  
11 evidence.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 6.8 (2022 Edition)  
28

*Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 9**

2                   INSTRUCTION NO. \_\_\_\_

3                   In deciding the facts in this case, you may have to decide which testimony to  
4 believe and which testimony not to believe. You may believe everything a witness says,  
5 or part of it, or none of it.

6                   In considering the testimony of any witness, you may take into account:

7                   (1) the opportunity and ability of the witness to see or hear or know the things  
8 testified to;

9                   (2) the witness's memory;

10                  (3) the witness's manner while testifying;

11                  (4) the witness's interest in the outcome of the case, if any;

12                  (5) the witness's bias or prejudice, if any;

13                  (6) whether other evidence contradicted the witness's testimony;

14                  (7) the reasonableness of the witness's testimony in light of all the evidence; and

15                  (8) any other factors that bear on believability.

16                  Sometimes a witness may say something that is not consistent with something else  
17 he or she said. Sometimes different witnesses will give different versions of what  
18 happened. People often forget things or make mistakes in what they remember. Also, two  
19 people may see the same event but remember it differently. You may consider these  
20 differences, but do not decide that testimony is untrue just because it differs from other  
21 testimony.

22                  However, if you decide that a witness has deliberately testified untruthfully about  
23 something important, you may choose not to believe anything that witness said. On the  
24 other hand, if you think the witness testified untruthfully about some things but told the  
25 truth about others, you may accept the part you think is true and ignore the rest.

1       The weight of the evidence as to a fact does not necessarily depend on the number  
2 of witnesses who testify. What is important is how believable the witnesses were, and  
3 how much weight you think their testimony deserves.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction - 6.9 (2022 Edition)  
28 *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 10**

2                   INSTRUCTION NO. \_\_\_\_

3                   You are here only to determine whether the defendant is guilty or not guilty of the  
4 charges in the Second Superseding Indictment. The defendant is not on trial for any  
5 conduct or offense not charged in the Second Superseding Indictment.

27                   Ninth Circuit Model Jury Instruction - 6.10 (2022 Edition)

28                   *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 11**

2                   INSTRUCTION NO. \_\_\_\_

3                   A separate crime is charged against the defendant in each count. You must decide  
4                   each count separately. Your verdict on one count should not control your verdict on any  
5                   other count.

27                   Ninth Circuit Model Jury Instruction - 6.11 (2022 Edition)

28                   *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 12**

2                   INSTRUCTION NO. \_\_\_\_

3                   The Second Superseding Indictment charges that the offenses alleged in Counts  
4 One through Nine were committed on “an unknown date on or between” two dates  
5 specified in those counts.

6                   Although it is necessary for the government to prove beyond a reasonable doubt  
7 that the offense was committed on a date on or between the two dates specified in each  
8 count of the Second Superseding Indictment, it is not necessary for the government to  
9 prove nor for you to find the particular date within that date range on which the offense  
10 was committed, as long as you find beyond a reasonable doubt that the offense occurred  
11 within that date range.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27                   Adapted from Ninth Circuit Model Jury Instruction - 6.18 (2022 Edition)

28                   *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 13**

2                   INSTRUCTION NO. \_\_\_\_

3

4                   You have heard testimony that the defendant made a statement. It is for you to

5 decide (1) whether the defendant made the statement, and (2) if so, how much weight to

6 give to it. In making those decisions, you should consider all the evidence about the

7 statement, including the circumstances under which the defendant may have made it.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27                   Ninth Circuit Model Jury Instruction - 3.1 (2020 Edition)

28                   *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 14**

2                   INSTRUCTION NO. \_\_\_\_

3                   You are about to hear evidence that the defendant may have committed a similar  
4 offense of child molestation.

5                   You may use this evidence to decide whether the defendant committed the act  
6 charged in the Second Superseding Indictment. You may not convict the defendant  
7 simply because he may have committed other unlawful acts. You may give this evidence  
8 such weight as you think it should receive or no weight.

27                   Ninth Circuit Model Jury Instruction - 2.11 (2022 Edition)

28                   *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 15**

2                   INSTRUCTION NO. \_\_\_\_

3                   You have heard testimony from persons who, because of education or experience,  
4                   were permitted to state opinions and the reasons for their opinions. This opinion  
5                   testimony is allowed because of the education or experience of this witness.

6                   Such opinion testimony should be judged like any other testimony. You may  
7                   accept it or reject it, and give it as much weight as you think it deserves, considering the  
8                   witness's education and experience, the reasons given for the opinion, and all the other  
9                   evidence in the case.

10                  

11                  

12                  

13                  

14                  

15                  

16                  

17                  

18                  

19                  

20                  

21                  

22                  

23                  

24                  

25                  

26                  

27                  Ninth Circuit Model Jury Instruction - 3.14 (2022 Edition)

28                  *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 16**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count One with aggravated sexual abuse of a minor,  
4 S.T., in violation of Section 2241(c) of Title 18 of the United States Code, on an  
5 unknown date on or between January 25, 2013 and January 24, 2015. In order for the  
6 defendant to be found guilty of that charge, the government must prove each of the  
7 following elements beyond a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with S.T.;

10                  Third, at the time of the sexual act, S.T. was under the age of twelve years old;

11                  Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles, Washington,  
12 which I instruct you is in Indian Country;

13                  For this Count, “sexual act” means the intentional touching, not through the  
14 clothing, of the genitalia of S.T. with an intent to abuse, humiliate, harass, degrade, or  
15 arouse or gratify the sexual desire of any person.

16                  The government need not prove that the defendant knew the victim’s age or that  
17 the defendant knew that the victim was under the age of twelve.

18                  Ninth Circuit Model Jury Instruction – 20.5 (2022 Edition)

19                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 17**

2                   INSTRUCTION NO. \_\_\_\_

3                   An act is done knowingly if the defendant is aware of the act and does not act  
4 through ignorance, mistake, or accident. The government is not required to prove that the  
5 defendant knew that his acts were unlawful. You may consider evidence of the  
6 defendant's words, acts, or omissions, along with all the other evidence, in deciding  
7 whether the defendant acted knowingly.

27                   Ninth Circuit Model Jury Instruction – 4.8 (2022 Edition)

28                   *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 18**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Two with aggravated sexual abuse of a minor,  
4 E.T., in violation of Section 2241(c) of Title 18 of the United States Code, on an  
5 unknown date on or between August 23, 2008, and August 23, 2010. In order for the  
6 defendant to be found guilty of that charge, the government must prove each of the  
7 following elements beyond a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with E.T.;

10                  Third, at the time of the sexual act, E.T. was under the age of twelve years old;

11                  Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles, Washington,  
12 which I instruct you is in Indian Country.

13                  For this Count, “sexual act” means the penetration, however slight, of the genital  
14 opening of E.T. by a finger, with an intent to abuse, humiliate, harass, degrade, or arouse  
15 or gratify the sexual desire of any person.

16                  The government need not prove that the defendant knew the victim’s age or that  
17 the defendant knew that the victim was under the age of twelve.

18                  Ninth Circuit Model Jury Instruction – 20.5 (2022 Edition)

19                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 19**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Three with aggravated sexual abuse of a minor,  
4 E.T., in violation of Section 2241(c) of Title 18 of the United States Code, on an  
5 unknown date on or between August 23, 2008, and August 23, 2010. In order for the  
6 defendant to be found guilty of that charge, the government must prove each of the  
7 following elements beyond a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with E.T.;

10                  Third, at the time of the sexual act, E.T. was under the age of twelve years old;

11                  Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles, Washington,  
12 which I instruct you is in Indian Country.

13                  For this Count, “sexual act” means the intentional touching, not through the  
14 clothing, of the genitalia of E.T. with an intent to abuse, humiliate, harass, degrade, or  
15 arouse or gratify the sexual desire of any person.

16                  The government need not prove that the defendant knew the victim’s age or that  
17 the defendant knew that the victim was under the age of twelve.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction – 20.5 (2022 Edition)

28 Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 20**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Four with aggravated sexual abuse of a minor,  
4 E.T., in violation of Section 2241(c) of Title 18 of the United States Code, on an  
5 unknown date on or between April 1, 2012, and May 30, 2012. In order for the defendant  
6 to be found guilty of that charge, the government must prove each of the following  
7 elements beyond a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with E.T.;

10                  Third, at the time of the sexual act, E.T. was under the age of twelve years old;

11                  Fourth, the sexual act occurred at Great Wolf Lodge located at 20500 Old Hwy 99

12                  SW, Centralia, Washington, which I instruct you is in Indian Country.

13  
14  
15                  For this Count, "sexual act" means contact between the penis and vulva,  
16 specifically penetration, however slight.

17  
18                  The government need not prove that the defendant knew the victim's age or that  
19 the defendant knew that the victim was under the age of twelve.  
20  
21  
22  
23  
24  
25  
26  
27                  Ninth Circuit Model Jury Instruction – 20.5 (2022 Edition)

28                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 21**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Five with aggravated sexual abuse of a minor,  
4 E.T., in violation of Section 2241(c) of Title 18 of the United States Code, on an  
5 unknown date on or between April 1, 2012, and May 30, 2012. In order for the defendant  
6 to be found guilty of that charge, the government must prove each of the following  
7 elements beyond a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with E.T.;

10                  Third, at the time of the sexual act, E.T. was under the age of twelve years old;

11                  Fourth, the sexual act occurred at Great Wolf Lodge located at 20500 Old Hwy 99  
12 SW, Centralia, Washington, which I instruct you is in Indian Country.

13  
14                  For this Count, "sexual act" means contact between the penis and the mouth.

15  
16                  The government need not prove that the defendant knew the victim's age or that  
17 the defendant knew that the victim was under the age of twelve.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction – 20.5 (2022 Edition)

28 Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 22**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Six with aggravated sexual abuse of a minor,  
4 E.T., in violation of Section 2241(c) of Title 18 of the United States Code, on an  
5 unknown date on or between May 1, 2012, and August 22, 2014. In order for the  
6 defendant to be found guilty of that charge, the government must prove each of the  
7 following elements beyond a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with E.T.;

10                  Third, at the time of the sexual act, E.T. was under the age of twelve years old;

11                  Fourth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles, Washington,  
12 which I instruct you is in Indian Country.

13                  For this Count, “sexual act” means contact between the penis and vulva,  
14 specifically penetration, however slight.

15                  The government need not prove that the defendant knew the victim’s age or that  
16 the defendant knew that the victim was under the age of twelve.

17                  Ninth Circuit Model Jury Instruction – 20.5 (2022 Edition)

18                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 23**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Seven with abusive sexual contact in violation  
4                   of Section 2244(a)(5) of Title 18 of the United States Code, on an unknown date on or  
5                   between August 23, 2010, and August 22, 2014. In order for the defendant to be found  
6                   guilty of that charge, the government must prove each of the following elements beyond  
7                   a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in sexual contact with E.T.;

10                  Third, at the time of the sexual contact, E.T. was under the age of twelve years  
11                  old;

12                  Fourth, the sexual contact occurred at 71 Snow Caps Lane, Port Angeles,  
13                  Washington, which I instruct you is in Indian Country.

14                  For this Count, “sexual contact” means that the defendant intentionally caused the  
15                  touching of his penis by E.T., with an intent to abuse, humiliate, harass, degrade, and  
16                  arouse or gratify the sexual desire of any person.

17                  The government need not prove that the defendant knew the victim’s age or that  
18                  the defendant knew that the victim was under the age of twelve.

19  
20  
21  
22  
23  
24  
25  
26  
27                  Ninth Circuit Model Jury Instruction – 20.16 (2022 Edition)

28                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 24**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Eight with sexual abuse of a minor in violation  
4 of Section 2243(a) of Title 18 of the United States Code, on an unknown date on or  
5 between August 1, 2015, and August 31, 2016. In order for the defendant to be found  
6 guilty of that charge, the government must prove each of the following elements beyond  
7 a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with E.T.;

10                  Third, at the time of the sexual act, E.T. was at least twelve years old but had not  
11 yet reached the age of sixteen years old;

12                  Fourth, E.T. was at least four years younger than the defendant; and

13                  Fifth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles, Washington,  
14 which I instruct you is in Indian Country.

15                  For this Count, "sexual act" means contact between the penis and vulva,  
16 specifically penetration, however slight.

17                  The government need not prove that the defendant knew the victim's age, knew  
18 that the victim was at least four years younger than the defendant, or knew that the victim  
19 was over the age of twelve or not yet sixteen years old.

20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction – 20.11 (2022 Edition)

28 Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 25**

2                   INSTRUCTION NO. \_\_\_\_

3                   The defendant is charged in Count Nine with sexual abuse of a minor in violation  
4                   of Section 2243(a) of Title 18 of the United States Code, on an unknown date on or  
5                   between August 1, 2015, and August 31, 2016. In order for the defendant to be found  
6                   guilty of that charge, the government must prove each of the following elements beyond  
7                   a reasonable doubt as to each count:

8                   First, the defendant is an Indian;

9                   Second, the defendant knowingly engaged in a sexual act with E.T.;

10                  Third, at the time of the sexual act, E.T. was at least twelve years old but had not  
11                  yet reached the age of sixteen years old;

12                  Fourth, E.T. was at least four years younger than the defendant; and

13                  Fifth, the sexual act occurred at 71 Snow Caps Lane, Port Angeles, Washington,  
14                  which I instruct you is in Indian Country.

15  
16  
17                  For this Count, "sexual act" means contact between the penis and the mouth.

18  
19                  The government need not prove that the defendant knew the victim's age, knew  
20                  that the victim was at least four years younger than the defendant, or knew that the victim  
21                  was over the age of twelve or not yet sixteen years old.

22  
23  
24  
25  
26  
27                  Ninth Circuit Model Jury Instruction – 20.11 (2022 Edition)

28                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 26**

2                   INSTRUCTION NO. \_\_\_\_

3                   For the defendant to be found to be an Indian, the government must prove the  
4 following, beyond a reasonable doubt:

5                   First, the defendant has some quantum of Indian blood, whether or not that blood  
6 is traceable to a member of a federally recognized tribe; and

7                   Second, the defendant was a member of, or affiliated with, a federally recognized  
8 tribe at the time of the offense.

9                   I instruct you that the Lower Elwha Klallam Tribe is a federally recognized tribe.

10                  The parties have stipulated that the defendant is an Indian, meaning that the  
11 defendant has some quantum of Indian blood, whether or not that blood is traceable to a  
12 member of a federally recognized tribe; and that the defendant was a member of, or  
13 affiliated with, the Lower Elwha Klallam Tribe at the time of the offense. You may  
14 accept these facts as having been proven beyond a reasonable doubt, and they are  
15 conclusively established.

16                  Ninth Circuit Model Jury Instruction – 24.14, 2.3 (2022 Edition)

17                  Approved Dec. 2021

1                   **PROPOSED FINAL INSTRUCTION NO. 27**

2                   INSTRUCTION NO. \_\_\_\_

3                   When you begin your deliberations, elect one member of the jury as your  
4 foreperson who will preside over the deliberations and speak for you here in court.

5                   You will then discuss the case with your fellow jurors to reach agreement if you  
6 can do so. Your verdict, whether guilty or not guilty, must be unanimous.

7                   Each of you must decide the case for yourself, but you should do so only after you  
8 have considered all the evidence, discussed it fully with the other jurors, and listened to  
9 the views of your fellow jurors.

10                  Do not be afraid to change your opinion if the discussion persuades you that you  
11 should. But do not come to a decision simply because other jurors think it is right.

12                  It is important that you attempt to reach a unanimous verdict but, of course, only if  
13 each of you can do so after having made your own conscientious decision. Do not change  
14 an honest belief about the weight and effect of the evidence simply to reach a verdict.

15                  Perform these duties fairly and impartially. Do not allow personal likes or  
16 dislikes, sympathy, prejudice, fear, or public opinion to influence you. You should also  
17 not be influenced by any person's race, color, religious beliefs, national ancestry, sexual  
18 orientation, gender identity, gender, or economic circumstances. Also, do not allow  
19 yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public  
20 opinion, or biases, including unconscious biases. Unconscious biases are stereotypes,  
21 attitudes, or preferences that people may consciously reject but may be expressed without  
22 conscious awareness, control, or intention.

23                  It is your duty as jurors to consult with one another and to deliberate with one  
24 another with a view towards reaching an agreement if you can do so. During your  
25 deliberations, you should not hesitate to reexamine your own views and change your  
26 opinion if you become persuaded that it is wrong.

1      Ninth Circuit Model Jury Instruction – 6.19 (2022 Edition)

2      *Approved Dec. 2021*

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1                   **PROPOSED FINAL INSTRUCTION NO. 28**

2                   INSTRUCTION NO. \_\_\_\_

3                   Because you must base your verdict only on the evidence received in the case and  
4                   on these instructions, I remind you that you must not be exposed to any other information  
5                   about the case or to the issues it involves. Except for discussing the case with your fellow  
6                   jurors during your deliberations:

7                   Do not communicate with anyone in any way and do not let anyone else  
8                   communicate with you in any way about the merits of the case or anything to do with it.  
9                   This restriction includes discussing the case in person, in writing, by phone, tablet,  
10                  computer, or any other means, via email, text messaging, or any Internet chat room, blog,  
11                  website or any other forms of social media. This restriction applies to communicating  
12                  with your family members, your employer, the media or press, and the people involved in  
13                  the trial. If you are asked or approached in any way about your jury service or anything  
14                  about this case, you must respond that you have been ordered not to discuss the matter  
15                  and to report the contact to the court.

16                  Do not read, watch, or listen to any news or media accounts or commentary about  
17                  the case or anything to do with it; do not do any research, such as consulting dictionaries,  
18                  searching the Internet or using other reference materials; and do not make any  
19                  investigation or in any other way try to learn about the case on your own.

20                  The law requires these restrictions to ensure the parties have a fair trial based on  
21                  the same evidence that each party has had an opportunity to address. A juror who violates  
22                  these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result  
23                  that would require the entire trial process to start over. If any juror is exposed to any  
24                  outside information, please notify the court immediately.

1      Ninth Circuit Model Jury Instruction – 6.20 (2022 Edition)

2      *Approved Dec. 2021*

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1                   **PROPOSED FINAL INSTRUCTION NO. 29**

2                   INSTRUCTION NO. \_\_\_\_

3                   Some of you have taken notes during the trial. Whether or not you took notes, you  
4                   should rely on your own memory of what was said. Notes are only to assist your  
5                   memory. You should not be overly influenced by your notes or those of your fellow  
6                   jurors.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27                   Ninth Circuit Model Jury Instruction – 6.21 (2022 Edition)

28                   *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 30**

2                   INSTRUCTION NO. \_\_\_\_

3                   The punishment provided by law for this crime is for the court to decide. You  
4 may not consider punishment in deciding whether the government has proved its case  
5 against the defendant beyond a reasonable doubt.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

Ninth Circuit Model Jury Instruction – 6.22 (2022 Edition)

28

*Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 31**

2                   INSTRUCTION NO. \_\_\_\_

3                   A verdict form has been prepared for you. On the form, there is a place for you to  
4 indicate your unanimous verdict as to each Count charged against the defendant.

5                   After you have reached unanimous agreement on a verdict, your presiding juror  
6 should complete the verdict form according to your deliberations, sign and date it, and  
7 advise the clerk that you are ready to return to the courtroom.  
8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27                  Ninth Circuit Model Jury Instruction – 6.23 (2022 Edition)

28                  *Approved Dec. 2021*

1                   **PROPOSED FINAL INSTRUCTION NO. 32**

2                   INSTRUCTION NO. \_\_\_\_

3                   If it becomes necessary during your deliberations to communicate with me, you  
4 may send a note through the clerk signed by any one or more of you. No member of the  
5 jury should ever attempt to communicate with me except by a signed writing, and I will  
6 respond to the jury concerning the case only in writing or here in open court. If you send  
7 out a question, I will consult with the lawyers before answering it, which may take some  
8 time. You may continue your deliberations while waiting for the answer to any question.  
9 Remember that you are not to tell anyone—including me—how the jury stands,  
10 numerically or otherwise, on any question submitted to you, including the question of the  
11 guilt of the defendant, until after you have reached a unanimous verdict or have been  
12 discharged.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Ninth Circuit Model Jury Instruction – 6.24 (2022 Edition)

28 | *Approved Dec. 2021*